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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,537	12/13/2001	Gerhard J Bleys	P 282804/EUR	8094

7590

10/06/2004

Pillsbury Winthrop LLP
1600 Tysons Boulevard
McLean, VA 22102

EXAMINER

SERGEANT, RABON A

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,537

Applicant(s)

BLEYS ET AL.

Examiner

Rabon Sergeant

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bleys et al. ('779) or Eling et al. ('483).

Patentees disclose resilient flexible polyurethane foams, having densities that meet those claimed by applicants, prepared from the reaction of water, polyisocyanates, and polyether polyols having greater than 50% by weight oxyethylene groups. See abstracts and tables. In view of the disclosures pertaining to the reactant compositions, the position is taken that applicants' claimed ratio of oxyalkylene groups and content of oxyethylene groups is inherently

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met by the disclosed polyurethanes. Furthermore, in view of the fact that the respective flexible polyurethanes are produced from equivalent reactants and possess overlapping densities, the position is further taken that applicants' claimed vibration transmissibility, resonance frequency, and hardness properties are inherent characteristics of the disclosed polyurethanes.

3. Claims 1-4, 6-12, and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bleys ('226) or Bleys et al. ('779) or Eling et al. ('483), each in view of Mackey ('409 or '553 or '528).

Bleys and Bleys et al. and Eling et al. disclose the production of resilient flexible polyurethane foams prepared from the reaction of water, 4,4'-diphenylmethane diisocyanate, and polyether polyols, having greater than 50% by weight oxyethylene groups, functionalities of 2-6, and equivalent weights that overlap those claimed by applicants. See abstracts. Furthermore, patentees disclose that prepolymer processes may be employed and that the polyurethanes may be molded. See column 3, lines 53+ within Bleys. See abstract and column 5, line 13 within Bleys et al. See abstract and column 4, lines 61+ within Eling et al.

4. Though the primary references are silent regarding applicants' claimed process of coating the mold with an external release agent and producing at least 10 moldings prior to recoating the mold with the external release agent, the position is taken that the initial coating of a mold with an external release agent and the subsequent production of up to 40 polyurethane moldings prior to recoating the mold with an external release agent was known at the time of invention. Mackey discloses such molding operations at column 9, lines 52+. Mackey further discloses that the mold may be closed or open. See column 9, lines 28-42. Furthermore, it is noted that applicants' claims fail to exclude the use of internal mold release agents. Therefore, it would

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have been obvious to utilize the molding process of Mackey to produce the polyurethane moldings of the primary references, because one would have been motivated to utilize an efficient and rapid molding process in the production of the polyurethanes, so as to increase throughput and decrease operating expenses. Additionally, it would have been well within the purview of the skilled artisan to treat the mold with release agent at time intervals that provided the greatest efficiency.

5. Applicants have argued that the references do not discuss a process for forming flexible molded foams with densities as claimed in the instant invention. The examiner has carefully considered this argument. It is noted that Bleys, Bleys et al., and Eling et al. teach that their disclosed foam formulations may be used within molding processes. Therefore, given that equivalent reactants are being used and that molding processes may be employed, it is reasonable to expect that patentees' formulations yield densities comparable to those of the instant invention. The position is further taken that the disclosed density values support this position and that applicants' argument does not clearly address this position. Though applicants state that the densities differ, applicants have failed to clearly distinguish, by means of rationale or evidence, the claimed apparent overall density from the density values given within the references, whether they be identified as simply density (Tables 1 and 2 of Bleys), core density (Bleys et al.) or free-rise density (Eling et al. and Table 3 of Bleys). The skilled artisan would not expect that the disclosed densities would differ appreciably from the claimed apparent overall density. Applicants have not addressed this position. Applicants' arguments with respect to Mackey have been considered; however, the examiner cannot agree that no reasonable expectation exists that the mold release techniques of Mackey would not be applicable to the

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formulations of the primary references. On the contrary, one would have expected that these techniques would be applicable to any polyurethane molding.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to R. Sergent at telephone number (571) 272-1079.


RABON SERGENT
PRIMARY EXAMINER

R. Sergent

October 2, 2004